HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Friday, May 3, 2013
83rd Legislature, Number 65
The House convenes at 10 a.m.
Part Two

Forty-three bills are on the daily calendar for second-reading consideration today. The bills on the General State Calendar analyzed in Part Two of today's *Daily Floor Report* are listed on the following page.

Five postponed bills — HB 832 Giddings et al., HB 1308 by Darby, HB 3158 by Zerwas, et al., HB 1087 Giddings, et al., and HB 416 by Hilderbran — are on the supplemental calendar for second-reading consideration today. The bill analyses are available on the HRO website at http://www.hro.house.state.tx.us/BillAnalysis.aspx.

Bill Callegari
Chairman
83(R) – 65

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SUBJECT: New authority for cultural education facilities finance corporations

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 8 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Martinez Fischer, Strama

0 nays

1 absent — Ritter

WITNESSES: For — Greg Eden, National Campus and Community Development Corp.; Janet Robertson, Haynes and Boone

Against — None

BACKGROUND: The Cultural Education Facilities Finance Corporation Act (Vernon's Texas Civil Statutes, art. 1528m) allows cities to create cultural education facilities finance corporations to issue bonds to finance the acquisition, construction, or renovation of cultural, educational, and health facilities.

DIGEST: HB 1809 would allow a cultural education facilities finance corporation to finance the acquisition of property by lease-purchase for the purpose of accomplishing its stated goals and to acquire or improve property, including buildings, personal property, or equipment for use by government entities for authorized purposes.

The bill would authorize a city or county that had created a corporation to exercise its authority within or outside the city or county limits of the city or county that created it. It would remove provisions limiting this authority to corporations created by a county with a population greater than 300,00 or by a city in a county with a population greater than 300,000.

The bill would take effect September 1, 2013.

SUPPORTERS SAY: HB 1809 would give governmental entities another tool to obtain financing for critical public use projects that do not meet the current definition of a cultural facility, such as water projects, fire stations, and

courthouses. It also would save taxpayers money by allowing governmental entities to finance revenue-generating public use facilities with tax-exempt conduit revenue bonds instead of by increasing taxes to pay for tax-supported bonds. The bonds issued by a conduit issuer would be non-recourse, typically secured by pledge of project revenue and a mortgage on the property.

This common sense measure, which currently is allowed in 45 states, would give cities more financial flexibility to build infrastructure with tax-exempt bonds that save taxpayers money.

OPPONENTS SAY:

HB 1809 would give governmental entities a new way to run up debt without having to get permission from voters to issue tax-supported bonds. If a city or county needs a facility, it should use the traditional revenue-supported bonds to transparently raise the funds for a facility.

SUBJECT: Expanding oyster sales fund use; abolishing the oyster advisory committee

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 7 ayes — T. King, Anderson, M. González, Kacal, Kleinschmidt, Springer, White

0 nays

WITNESSES: For —Tracy Woody, Jeri's Seafood; *(Registered, but did not testify:* Ken Hodges, Texas Farm Bureau; Joey Park, Coastal Conservation Association Texas*)*

Against — None

On — *(Registered, but did not testify:* Kirk Wiles, Department of State Health Services*)*

BACKGROUND: Following a serious bacterial outbreak in Galveston Bay in 1998 that closed the bay for fishing and related activities and virtually shut down the Texas oyster industry, the 76th Legislature in 1999 responded by enacting new statutory provisions to protect public health and the commercial oyster industry.

The Department of State Health Services (DSHS) is charged with monitoring bay water, collecting shellfish meat samples, opening or closing oyster harvesting areas, studying oyster diseases affecting the availability of oyster harvesting, and studying organisms associated with illness through the consumption of oysters. These activities are funded by deposits made in the oyster sales general revenue dedicated account from penalties and the $1 fee on each barrel of oysters harvested or processed.

The comptroller estimated a balance of about $900,000 in the oyster sales general revenue dedicated account at the beginning of fiscal 2014-15. Of this amount, both the House and Senate versions of the proposed general appropriations act would appropriate about $500,000 in the coming biennium to DSHS for oyster-related activities.

The Seafood Safety Laboratory at Texas A&M University at Galveston is

certified by the U.S. Food and Drug Administration to study and analyze organisms that may be associated with human illness resulting from the consumption of oysters and to monitor bacterial levels in oysters. Because of the fiscal constraints in the last two budget periods, funding for the seafood safety lab has been reduced. If the lab cannot be sustained with current funding levels, it could lose its federal certification.

DIGEST:

CSHB 1903 would require the comptroller to allocate $100,000 each fiscal year from the unencumbered balance remaining in the oyster sales account to Texas A&M University at Galveston to study and analyze organisms that could be associated with human illness and transmitted through the consumption of oysters.

The bill would remove the provision stating that funds in the oyster sales account would first be appropriated for public health activities and would specify that funds in the account could be used only on oyster-related activities identified in statute. Those activities would be expanded to include analyzing organisms that could be associated with human illness and that could be transmitted through the consumption of oysters.

The oyster sales account funds also could contribute to the support of the Texas Parks and Wildlife Department's oyster shell recovery and replacement program. The bill would remove promotion and advertising of the oyster industry by the Texas Department of Agriculture as an allowable use of the funds.

CSHB 1903 would abolish the oyster advisory committee and would repeal the Texas Oyster Program dealing with promotion and advertisement of the Texas oyster industry.

This bill would take effect September 1, 2013.

SUBJECT: Allowing the Port Arthur EDC for certain job-related skills training

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 5 ayes — Dutton, Alvarado, Anchia, Elkins, J. Rodriguez

0 nays

2 absent — Leach, Sanford

WITNESSES: For — (*Registered, but did not testify:* June Deadrick, CenterPoint Energy)

Against — (*Registered, but did not testify:* Carlton Schwab, Texas Economic Development Council)

BACKGROUND: Local Government Code, sec. 501.162 allows local economic development corporations (EDCs) to use local sales-tax revenue for job training offered through a business enterprise only if the business enterprise has committed in writing to:

- create new jobs that pay wages that are at least equal to the prevailing wage for the applicable occupation in the local labor market area; or
- increase its payroll to pay wages that are at least equal to the prevailing wage for the applicable occupation in the local labor market area.

DIGEST: The bill would allow the Port Arthur EDC to spend local sales-tax revenue to provide job training skills and job-related life skills sufficient to enable an unemployed individual to obtain employment. The EDC would be allowed to contract out the training services.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS HB 1967 would broaden the ability of the Port Arthur EDC to spend local

SAY:

sales taxes on job training programs. Under current law, EDCs may spend tax revenues on job-training programs only if a business enterprise commits in writing to create certain new jobs or increase wages. HB 1967 would allow for generalized job training without requiring businesses to make commitments beforehand in writing.

Port Arthur's EDC needs this flexibility because it has an unusually low-skilled working population and one of the highest unemployment rates in Texas. HB 1967 would give the local EDC the flexibility it needs to offer job-training programs. Job training would allow the populace to strengthen certain skills, making the region more attractive to businesses and other employers.

HB 1967 would not create a slippery slope because every expansion of the economic development laws would need legislative approval. If a proposed expansion were inappropriate, the Legislature could reject it.

The bill would not require the Port Arthur EDC to fund job training programs. It only would grant it flexibility to do so where the economic return made sense.

According to the fiscal note, this bill would not have an impact on the state budget.

OPPONENTS SAY:

HB 1967 is not needed. The Port Arthur EDC already may conduct these job training programs under current law. Even if EDCs could not fund job training programs, these programs already enjoy multiple other funding streams, including federal funds.

It would be inappropriate to create specific carve outs in economic development law because it would place some Texas localities on unequal footing with others. It is better to have robust, generally applicable economic development laws that allow all of Texas to better compete globally and with other states.

SUBJECT: Proper classification of public contract workers, providing a penalty

COMMITTEE: Economic and Small Business Development — committee substitute recommended

VOTE: 7 ayes — J. Davis, Vo, Y. Davis, Murphy, Perez, E. Rodriguez, Workman

0 nays

2 absent — Bell, Isaac

WITNESSES: For — None

Against — Cathy Dewitt, Texas Association of Business

On — Steve Riley, Texas Workforce Commission; (*Registered, but did not testify:* Rick Levy, Texas AFL-CIO; Leigh Pursell, Texas Workforce Commission)

BACKGROUND: In determining whether a worker is an independent contractor or an employee, the Labor Code, ch. 201 provides a definition for what constitutes employment.

DIGEST: CSHB 2015 would amend Labor Code, ch. 214 to add a penalty for the misclassification of certain workers. The bill would require a person contracting to provide a service to a government entity to properly classify a person compensated to perform the service as an employee or independent contractor. The classification would have to be in accordance with Labor Code, ch. 201. Subcontractors on a government contract also would have to properly classify individuals they directly retained and compensated for services performed.

A contractor or subcontractor that failed to properly classify an individual retained for services on a public contract would be penalized by the Texas Workforce Commission (TWC) $200 for each individual improperly classified. TWC would not be able to collect a penalty three years after the date on which the violation occurred.

The bill would take effect on January 1, 2014.

SUPPORTERS SAY:

This bill seeks to deter the incentive to misclassify workers – in particular, for services performed under public works contracts. The Texas Workforce Commission is currently limited in its ability to respond to misclassification of employees under the Texas Unemployment Compensation Act. If an employer is found to have not properly classified employees, that employer must pay any retroactive unemployment insurance taxes but is not subject to a fine.

By allowing the imposition of a penalty in addition to retroactive unemployment insurance taxes, TWC would be better able to enforce its policy on the proper classification of workers. By serving as a deterrent to misclassification, the bill would also reduce the imposition of a tax burden on certain employers that may bear the costs of improper classification by others. The bill would be limited to public works contracts, an appropriate area to begin addressing this issue.

OPPONENTS SAY:

The bill would rely on the Labor Code's definition used for determining whether an individual was classified as an employee or independent contractor. The test used by TWC to classify workers should be the test used by the Internal Revenue Service (IRS). Companies need to know that they are going to have the same standard at the federal level as at the state level. If the IRS says an individual qualifies as an independent contractor and the state says otherwise, confusion results.

SUBJECT: Continuing state center and council on racial and ethnic disproportionality

COMMITTEE: Human Services — committee substitute recommended

VOTE: 9 ayes — Raymond, N. Gonzalez, Fallon, Klick, Naishtat, Rose, Sanford, Scott Turner, Zerwas

0 nays

WITNESSES: For — Eileen Garcia, Texans Care for Children; Janna Lilly, Texas Council of Administrators of Special Education; Kyev Tatum, Texas Southern Christian Leadership Conference; Michael Vitris, Texas Appleseed; (*Registered, but did not testify:* Yannis Banks, Texas NAACP Katherine Barillas, One Voice Texas; Doug Bell, St. James Episcopal Church; Dennis Borel, Coalition of Texans with Disabilities; Jennifer Carreon, Texas Criminal Justice Coalition; Krista Del Gallo, Texas Council on Family Violence; Leah Gonzalez, National Association of Social Workers; Patricia V. Hayes; Guy Herman; Jennifer Hogue; Diana Martinez, TexProtects, The Texas Association for the Protection of Children; Kristi Morrison, Texas Counseling Association; Matt Simpson, ACLU of Texas; Vicki Spriggs, Texas CASA; Glenn Stockard, Texas Association Against Sexual Assault; Michael Vasquez, Texas Conference of Urban Counties)

Against — (*Registered, but did not testify:* Annie Mahoney, Texas Conservative Coalition)

On — Joy James, HHSC; Meagan Longley, Hogg Foundation for Mental Health; Judy Powell; (*Registered, but did not testify:* Elizabeth Kromrei, Department of Family and Protective Services)

BACKGROUND: Health and Safety Code, ch. 107a, governs the Center for Elimination of Disproportionality and Disparities, formerly the Office of Minority Health.

In 2011, the 82nd Legislature enacted SB 501 by West to establish the Interagency Council for Addressing Disproportionality governed by chapter 2, Human Resources Code.

DIGEST: CSHB 2038 would add new duties to the Center for Elimination of

Disproportionality and Disparities (Center) and the Interagency Council for Addressing Disproportionality (Council). The bill would also change the composition of the Council and continue it until December 1, 2015.

The bill would require the Center to:

- identify the social determinants and health conditions in most need of high-impact response;
- monitor how plans were implemented to address health disparities across health and human services agencies;
- submit a report to the Health and Human Services Commission (HHSC) by July 1 of each year on the above activities and findings;
- assist HHSC and any other relevant agencies in developing cross-systems performance measures aligned with the Texas model for addressing disproportionality and disparities in the education, juvenile justice, child welfare, health, and mental health systems;
- implement the Texas model for addressing disproportionality and disparities;
- advise certain agencies on the implementation and delivery of cultural competency training; and
- develop collaborative partnerships with community organizations to support the delivery of culturally competent services to children and families of every race and ethnicity.

The bill would require the Council to:

- develop and adopt a Texas model for addressing disproportionality and disparities, based on the Council's research and findings, to be implemented across the relevant state agencies; and
- submit a report by 2014 to the lieutenant governor, the speaker of the House of Representatives, and the Legislature about the status of the implementation of the Texas model for addressing disproportionality and disparities in certain systems.

Under the bill, the Council would add the following representatives:

- one person who was a director of special education for a public school district;
- two persons who were current or former recipients of services provided by the child welfare, juvenile justice, education, or children's mental health systems; and

- one representative of the business community.

The bill would also add a two-year term limit for certain Council members.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 2038 would continue the Interagency Council for Addressing Disproportionality and would direct the Center for Elimination of Disproportionality to implement the Council's recommendations from its report to the 83rd Legislature to improve outcomes in state systems for all Texans.

While some progress has been made to address disproportionality and disparities affecting certain racial or ethnic minority children across all health and human services systems, there is still work to be done. Research from the Council's report to the 83rd Legislature shows that these groups of minorities are still consistently over represented across all health and human services systems as compared to their representation in the general population, even after controlling for a child's home life and other variables.

African-American children make up 12 percent of Texas children but represent about a third of children expelled from school and about a third of children referred to the juvenile justice system. Hispanic children make up less than half of the Texas public school population, but almost two-thirds of all children expelled from school. African-American children are 1.4 times more likely than Hispanic and Anglo children to be referred to a mental health clinic. African Americans, Hispanics and Native Americans are more likely to be reported to the Department of Family and Protective Services than Anglos, even after taking into account neglect and abuse types. African-American children are more likely to be ticketed in school than their peers, after taking into account all other variables.

By changing the composition of the Council to include more stakeholders, the bill would strengthen the mechanism for ensuring that representatives from key systems, such as special education, would work together to implement best practice standards to address systemic disproportionality and disparities and improve the long-term outcomes for all Texan children

and families.

Other states look to Texas' Council and Center as a best practice model. CSHB 2038 would allow Texas to continue blazing trails in systematically examining a deeply embedded issue. The bill would not require any new funding not already included in the budget.

Government action is necessary to fix gaps in coordination between government agencies that result in disproportionality and disparity. The bill would also help standardize policy between state agencies to ensure individuals were treated equally.

OPPONENTS SAY:

CSHB 2038 would provide the basis for expanded government action, when government action is not the solution for addressing disparities in the areas of education, health and human services, child welfare, and juvenile justice. The law should judge people as individuals, not by their race, wealth, or sex. The bill could further exacerbate the problem by judging people based on their attributes.

NOTES:

The Legislative Budget Board fiscal note said the bill would have a negative impact of $1,529,526 for fiscal 2014-15, including money for 14 new employees and related office expenses. The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the bill's provisions.

SUBJECT: Sale of energy from certain cogeneration facilities

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 11 ayes — Cook, Giddings, Craddick, Farrar, Frullo, Geren, Hilderbran, Huberty, Oliveira, Smithee, Sylvester Turner

0 nays

2 absent — Harless, Menéndez

WITNESSES: For — Paul Cauduro and Tommy John, Texas Combined Heat and Power Initiative (*Registered, but did not testify*: Raymond Deyoe, Integral Power LLC; Gene Fisseler, NRG Energy; Adam Haynes, Chesapeake Energy; Rich Herweck, Texas Combined Heat and Power Initiative; David Weinberg, Texas League of Conservation Voters)

Against — None

On — (*Registered, but did not testify*: Bryan Kelly, Public Utility Commission; Chad Seely, Electric Reliability Council of Texas)

BACKGROUND: A cogeneration facility is a facility, often at large industrial plant such as a petrochemical complex, that produces electricity and another form of useful thermal energy (such as heat or steam) in a way that is more efficient than the separate production of both forms of energy.

DIGEST: CSHB 2049 would allow a qualifying cogenerator, as defined under federal law, to sell electric energy at retail to more than one purchaser of the cogenerator's thermal output.

The cogenerator would not be subject to regulation as a retail electric utility or power generation company if certain conditions were met. The transmission facilities used to provide electricity necessary to serve the purchasers of the thermal output could not extend beyond the site of any thermal purchaser, and would have to be owned by the qualifying cogenerator, the thermal purchaser, or an affiliate of these entities.

CSHB 2049 states that the limitation on the sale of electricity would not

apply to the sale of wholesale electricity.

CSHB 2049 also would not apply to a municipally owned utility or an electric cooperative providing service to an area where competition had not been introduced.

CSHB would take effect September 1, 2013.

NOTES:

The author intends to offer an amendment to clarify some language in the bill.

SUBJECT: Modifying plumbing license regulation

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 5 ayes — Smith, Kuempel, Geren, Guillen, S. Thompson

0 nays

4 absent — Gooden, Gutierrez, Miles, Price

WITNESSES: For — Stanley Briers, Texas Plumbing, Air Conditioning and Mechanical Contractors Association; Michael Villasana; (*Registered, but did not testify:* Leonard Aguilar, Southwest Pipe Trades Association; Rene Lara, Texas AFL-CIO; Jennifer Rodriguez, Plumbing-Heating-Coolnig Contractors Association)

Against — None

BACKGROUND: Under Occupations Code, ch. 1301, a licensed master plumber who has completed certification to add a water supply protection specialist endorsement on the person's license may install, service, and repair plumbing associated with the use and distribution of rainwater.

Sec. 1301.303 allows the board to investigate violations of plumbing regulation by a licensed plumber or an unlicensed individual performing plumbing, but not the owner of a plumbing company.

DIGEST: CSHB 2062 would change the definition of "plumbing" in ch. 1301 to include the installation, repair, and service of equipment for rainwater harvesting. The bill would define "rainwater harvesting" to mean to capturing, diverting, storing, treating, and distributing rainwater from a roof structure for potable drinking water for personal residence or domestic use.

The water supply protection specialist endorsement on a plumbing license would authorize plumbing associated with the treatment – in addition to the use and distribution – of rainwater. "Water treatment" would not include treatment of rainwater or the repair of systems for rainwater

harvesting.

The bill would require a person performing plumbing services to give a customer an invoice or completed contract document upon the job's completion, regardless of whether a fee was charged for the service. A person holding a plumbing license or registration would have to carry the license while performing plumbing services.

The bill would extend the authority of the Texas State Board of Plumbing Examiners to investigate not only licensed or unlicensed plumbers, but also owners of plumbing companies of alleged plumbing regulation violations.

The bill would specify that that a municipality no longer had to require permits for replacing lavatory or kitchen faucets, ballcocks, water control valves, garbage disposals, or water closets.

The bill would take effect September 1, 2013, and would apply only to services performed on or after that date.

SUBJECT: Allowing certain faculty members to participate in a benefits program

COMMITTEE: Pensions — committee substitute recommended

VOTE: 6 ayes — Callegari, Alonzo, Branch, Frullo, Gutierrez, P. King

0 nays

1 absent — Stephenson

WITNESSES: For — David Albert, Patrick Collins, ACC/AFT; Richard Cutler, Adjunct Faculty Association, Austin Community College; Ted Melina Raab, Texas AFT; Becky Villarreal, AFT; (*Registered, but did not testify:* Leslie Cunningham, Harrison Hiner, Judy Holloway, Kathryn Kenefick, and Derrick Osobase, Texas State Employees Union; Daniel Dewberry, ACC/AFT; and four individuals)

Against — None

On — Alicia Del Rio, Austin Community College; (*Registered, but did not testify:* Robert Kukla, Employees Retirement System of Texas)

BACKGROUND: Insurance Code, sec. 1551.1021 sets conditions for adjunct faculty members at public institutions of higher education to participate in the group benefits program (GBP) administered by the Employee Retirement System of Texas (ERS).

An adjunct faculty member must have taught at least one course in each fall and spring semester of the preceding three years and be assigned to teach at least 12 credit hours in the academic year of insurance coverage. Employees who also perform nonteaching duties must be assigned to teach at least six semester credit hours in the academic year of coverage and be approved by the institution to participate in the GBP.

DIGEST: CSHB 2127 would allow adjunct faculty members at state higher education institutions to participate in the GBP if they taught at least one course in the fall and spring semester in the preceding academic year.

The bill also would allow adjunct librarians to participate in the GBP.

The ERS board of trustees would be required to include coverage for those adjunct faculty members who qualified in an insurance policy, contract, or evidence of coverage issued or renewed on or after January 1, 2014.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 2127 would amend stringent eligibility guidelines that prevent many adjunct faculty members from participating in a state group health plan. The bill would lower the previous teaching requirement from three years to one year.

There would be a limited number of employees who would enroll in the health plan, according to ERS estimates, and most would pay the full cost to cover themselves and their families.

Although some of the new enrollees are expected to have serious health issues, the Legislative Budget Board (LBB) fiscal note says any higher health care costs could be absorbed within existing GBP program resources.

The bill also would allow adjunct librarians to participate on the same basis as other adjunct faculty members. Instead of hiring librarians as administrative employees, some colleges hire them as adjuncts faculty members. Even though they are faculty members these adjunct librarians often have limited teaching assignments and do not meet the 12 credit hour requirement.

The lack of benefits drives good people from teaching. It is not uncommon, especially for newer faculty, to not get assigned a class or to have a class canceled due to insufficient registration. Under current law, that could mean an adjunct faculty member might miss out on qualifying for health care. One adjunct faculty member said he didn't know of another employer who would require an employee to work for three years before qualifying for health insurance.

OPPONENTS SAY:

CSHB 2127 would make an additional 1,250 adjunct faculty members eligible for state-sponsored health insurance, according to the fiscal note. ERS estimates that only about 135 would enroll, but that those are likely to be individuals with the most expensive health care needs. The health insurance industry refers to this as "adverse selection" and ERS estimates

it would increase the average cost of coverage for all members, which could increase state and employee contribution rates.

SUBJECT: Water utility fees charged to certain recreational vehicle parks

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 6 ayes — Dutton, Alvarado, Elkins, Leach, J. Rodriguez, Sanford

0 nays

1 absent — Anchia

WITNESSES: For — Brian Schaeffer, Texas Association of Campground Owners; (*Registered, but did not testify*: Carol Baker, Texas Recreational Vehicle Association; Mark Borskey, Texas Recreational Vehicle Association)

Against — None

DIGEST: CSHB 2152 would require that municipally owned water utilities charge recreational vehicle parks the same as other commercial businesses that serve transient customers and receive nonsubmetered master-meter service.

The bill would prohibit water districts from charging RV parks on the basis of connections to the park's transient customers. The fee would have to be based on the recreational vehicle park's nonsubmetered connection.

This bill would take effect September 1, 2013.

SUPPORTERS SAY: CSHB 2152 would clarify existing law that prohibits municipally owned water utilities and water districts from charging master metered RV parks fees for water service based on the number of individual connections.

Despite clear language that prohibits cities and water districts from charging fees for each individual connection at an RV park that is being master metered, some cities continue to try to get around current law. This bill would send a clear statement to cities and water districts to charge master-metered RV parks the same as they charge other businesses, such as motels and hotels. Cities and water districts do not charge lodging properties water fees based on the number of visitors

staying at their establishments and RV parks should be treated in the same manner.

OPPONENTS SAY:

Water within an RV park is delivered to individual taps or dwellings. Municipally owned water utilities and water districts should be able to bill the RV park a fee for each individual tap.

Local governments know best how to run their own water systems to address local needs. The bill is yet another state mandate interfering with local control.

SUBJECT: Modifying processes governing TxDMV fees

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 25 ayes — Pitts, Sylvester Turner, Ashby, Bell, G. Bonnen, Carter, Crownover, Darby, S. Davis, Dukes, Howard, Hughes, S. King, Longoria, Márquez, McClendon, Muñoz, Jr., Orr, Otto, Patrick, Perry, Price, Raney, Ratliff, Zerwas

0 nays

1 absent — Gonzales

1 present, not voting — Giddings

WITNESSES: For — Lori Levy, Texas Association of Realtors (*Registered, but did not testify:* Jim Allison, County Judges and Commissioners Association of Texas; Jay Barksdale, Dallas Regional Chamber; Victor Boyer, San Antonio Mobility Coalition, Inc.; Rebecca Bray, Real Estate Council of Austin; Gary Bushell, U S 190/Gulf Coast Stragic Highway Coalition, Alliance for I 69 Texas; C. Brian Cassidy, Alamo RMA, Cameron County RMA, Camino Real RMA, Central Texas RMA, Grayson County RMA, North East Texas RMA; Don Durden, Civil Engineering Consultants; John Esparza, Texas Motor Transportation Association; Daniel Gonzalez, Texas Association of REALTORS; Duane Gordy, Community Development Education Foundation; Tom Griebel, Transportation Advocates of Texas; Leslie Harlan, Wts-San Antonio; Debbie Ingalsbe, County Judges and Commissioners Association of Texas; Brandon Janes, Transportation Advocates of Texas; Dennis Kearns, BNSF Railway; James LeBas, TxOGA; Jennifer McEwan, Texas Transportation Alliance; Stephen Minick, Texas Association of Business; Eddie Miranda, Greater Houston Partnership; Seth Mitchell, Bexar County Commissioners Court; Martin Molloy, Dallas Regional Chamber; Scott Norman, Texas Association of Builders; Lawrence Olsen, Texas Good Roads Assn; TJ Patterson, City of Fort Worth; Jim Reed, San Antonio Medical Foundation; Louis Rowe, Goetting and Associates; Rider Scott, Transportation Advocates of Texas; Tom Sellers, Conocophillips; Tom Shaw, South Chamber of San Antonio Vic Suhm, Tarrant Regional Transportation Coalition; Chelsey Thomas, Texas Association of Realtors; Michael Vasquez, Texas Conference of

Urban Counties; Kelli Borbon; Rob Killen; John Shackett)

Against — (*Registered, but did not testify*: Chris Cornell, Reece Albert, Inc.; John Stuart, National Association of Social Workers Texas Chapter)

On — Victor Vandergriff, TxDMV (*Registered, but did not testify*: Whitney Brewster, , Michael Endlich, Linda Flores, and Jeremiah Kuntz TxDMV)

BACKGROUND:

The 81st Legislature in 2009 enacted HB 3097 by McClendon, which created the Texas Department of Motor Vehicles (TxDMV) as a separate state agency and transferred to it certain functions previously performed by the Texas Department of Transportation. TxDMV became operational on November 1, 2009.

DIGEST:

CSHB 2022 would modify provisions and transfers of funds from State Highway Fund (Fund 6) to the TxDMV.

The Texas Department of Motor Vehicles fund. The bill would establish the TxDMV fund as a special fund in the treasury outside the general revenue fund and the state highway fund. The fund would consist of:

- money appropriated by the legislature to TxDMV;
- money allocated to pay fund accounting costs and related liabilities of the fund;
- gifts, grants, and donations received by the department;
- money required by law to be deposited to the fund;
- interest earned on money in the fund; and
- other revenue received by the department.

Money appropriated to TxDMV for the Automobile Burglary and Theft Prevention Authority purposes could not be deposited into the fund.

Money required to be deposited in the TxDMV fund could be used only:

- to support TxDMVs operations and the administration and enforcement of the its functions; or
- to pay the accounting costs and related liabilities for the fund, including fringe benefits, workers' compensation, and unemployment compensation.

Method of finance. The bill would amend various provisions of the Transportation Code to direct certain fees or portions of fees currently deposited to Fund 6 to the TxDMV fund, including fees related to the titling and registration of vehicles, issuance of license plates, registration and regulation of commercial vehicles, and issuance of disabled parking placards.

Registration process and handling fee. TxDMV could collect a fee, in addition to other registration fees for the issuance of a license plate, a set of license plates, or another device used as the registration insignia, to cover the expenses of collecting those registration fees, including a service charge for registration by mail.

The TxDMV board would set the fee by rule in an amount that included the existing $1 fee for mail-in registration, and was sufficient to cover the expenses associated with collecting registration fees by:

- TxDMV
- a county tax assessor-collector;
- a private entity with which a county tax assessor-collector contracts; or
- a deputy assessor-collector that is deputized in accordance with rules.

The county tax assessor-collector, a private entity with which a county tax assessor-collector contracted, or a deputy assessor-collector could retain a portion of the fee collected as provided by board rule. Remaining amounts collected would be deposited to the credit of the TxDMV Fund.

The TxDMV board could adopt a fee, currently set in statute at $1, of between 50 cents and $1 for registration and tiling. The fee would be deposited into a subaccount in the TxDMV Fund.

Other provisions. TxDMV's executive director could authorize a business to perform a department function in accord with rues determined by the TxDMV board.

The TxDMV board would adopt rules to determine the classification types of:

- deputies performing titling and registration duties;
- the duties and obligations of deputies;
- the type and amount of any bonds that may be required for a deputy to perform titling and registration duties; and
- the fees that may be charged or retained by deputies.

A county assessor-collector could deputize an individual to perform titling and registration services with the approval of the county commissioners court.

SUPPORTERS SAY:

CSHB 2022 would consummate the financial transition of duties related to titling and registration of vehicles from TxDOT to TxDMV that began in 2009 when the Legislature moved administrative functions to the new agency. The legislation that completed the transition to the TxDMV provided for the transfer of duties and related appropriations from TxDOT to TxDMV. The Legislature did not at the time, however, revise the financial framework to mirror the change in practice. Funds collected for TxDMV were still deposited into Fund 6, where TxDOT would accordingly transfer the portion of funds appropriated to TxDMV.

CSHB 2022 would uphold the 83rd Legislature's priority of pursuing truth in taxation and honest budgeting practices. The bill would eliminate the practice of revolving funds destined for and collected by TxDMV through Fund 6 and TxDOT. Creating a clear path for these funds, in addition to improving transparency, enhances administrative efficiency. Funds collected for a specific purpose go to a fund set up to finance that purpose.

The bill also would move to the TxDMV fund $59 million collected for vehicle registration automation that have been languishing in Fund 6. These funds are dedicated by statute to registration purposes, but have been sitting idle in Fund 6. The bill would move this balance to the TxDMV fund, where it could be appropriated for its intended purposes.

The fee-setting authority the bill would grant to the TxDMV board would be a good governance measure designed to allow the board sufficient flexibility to set uniform fees for services that cover costs of administration. There is no reason to believe the board would significantly increase fees. The bill only authorizes the board to set the fee to cover costs and, in addition, all amounts are subject to appropriation by the Legislature.

OPPONENTS SAY:

Increasing the authority of the TxDMV board to set fees could open the door to higher fees for current services. Costs may be more likely to rise where a body is given the authority to increase fees to match. Vehicle registration-related fees are regressive in that they place heavier burdens on low-income individuals, who depend on their vehicles as a means of work and transportation.

NOTES:

The Legislative Budget Board fiscal note estimates a net gain to the TxDMV fund of $161.4 million in fiscal 2014 and $103.6 million in fiscal 2015. This gain would be attended with a corresponding net loss to Fund 6.

SUBJECT: Making medical examiner addresses confidential on property-tax rolls

COMMITTEE: Government Efficiency and Reform — favorable, without amendment

VOTE: 7 ayes — Harper-Brown, Perry, Capriglione, Stephenson, Taylor, Scott Turner, Vo

WITNESSES: For — None

Against — None

On — Lynn Garcia, Texas Forensic Science Commission

BACKGROUND: Tax Code, sec. 25.025 makes the information of certain law enforcement professionals and others in property-tax appraisal records confidential if it identifies the home address of a named individual and the individual chooses to restrict public access to the information. The information is available only for the official use of an appraisal district, the state, the comptroller, and taxing units and subdivisions.

The covered groups are:

- current or former peace officers;
- a county jailer;
- a TDCJ employee;
- a commissioned security officer;
- a victim of family violence, if as a result of the act against the victim, the perpetrator is convicted of a felony or a class A misdemeanor;
- a federal judge, a state judge, or a spouse;
- a current or former employee of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;
- an officer or employee of a community supervision and corrections department;
- a criminal investigator of the United States;
- a police officer or inspector of the United States Federal Protective Service;

- a current or former U.S. attorney or assistant U.S. attorney and the spouse and child of the attorney; and
- a current or former employee of the attorney general who is or was assigned to a division of the office that involved law enforcement.

DIGEST:

HB 2267 would add to the list of groups whose identifying information in property-tax rolls was confidential medical examiners and persons who performed forensic analysis or testing who were employed by the state or a political subdivision.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUBJECT: Excluding certain crop dusting operations costs for franchise tax purposes

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 7 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Martinez Fischer

1 nay — Strama

1 absent — Ritter

WITNESSES: For — Bob Bailey and Chris Shields, Texas Agricultural Aviation Association

Against — None

On — *(Registered, but did not testify:* Teresa Bostick and Ed Warren, Comptroller of Public Accounts*)*

BACKGROUND: The Texas franchise tax, or "margins" tax, applies to each taxable entity that does business or is organized in the state. The tax is calculated as either 1 percent or 0.5 percent of taxable margin.

In general, a taxable entity's margin is apportioned to the state to determine the amount of tax imposed by multiplying the margin by the fraction of the entity's total receipts that are from doing business in the state.

14 C.F.R., sec. 137.3 (crop dusting) defines "agricultural aircraft operation" as the operation of an aircraft for dispensing any economic poison, dispensing any other substance intended for plant nourishment, soil treatment, propagation of plant life, or pest control, or engaging in dispensing activities directly affecting agriculture, horticulture, or forest preservation, but not including the dispensing of live insects.

DIGEST: CSHB 2451 would amend the Tax Code provisions for determining total revenue for franchise tax purposes by directing that an agricultural aircraft operation (crop dusting) exclude from its total revenue the cost of labor, equipment, fuel, and materials.

This bill would take effect January 1, 2014, and would apply to a franchise tax report due on or after that date.

SUPPORTERS SAY:

CSHB 2451 would relieve the crop dusting industry of an excessive burden under the franchise tax. Because crop dusting companies can deduct very little from their gross revenues, they end up owing between 15 percent and 20 percent of their net profit in margins tax at the 1 percent rate, resulting in exceptionally low net profit.

The average crop duster operation today relies on airplanes that cost as much as a million dollars each. They also buy fuel in 10,000-gallon increments and pay highly skilled pilots to deliver crop protection and fertilizer products. In many parts of the state these operations are essential in crop production, significantly increasing yields and profitability for farmers.

The agricultural aircraft operation industry is treated as a service industry under the franchise tax, rather than one producing goods, and therefore is not allowed to deduct the cost of labor, equipment, fuel and other materials. These operations have little in common with most service industries. They are much more like manufacturing or other goods-producing industries in that they pay high costs for their planes, fuel and pilots instead of simply having to buy computers and desks like many companies in the services sector. CSHB 2451 would treat them like an entity producing goods and would allow them to deduct these significant costs from their revenues.

The Legislature has made exceptions for other industries similarly situated. For example, a taxable entity furnishing labor or materials to a project for construction, improvement, or remodeling of real property is allowed to deduct those expenditures as a cost of goods sold.

The fiscal note on the bill shows a cost of $288,000 for the 2014-15 biennium. This is a modest amount that would help a very small industry vital to Texas agriculture.

OPPONENTS SAY:

CSHB 2451 would have an indirect impact on general revenue funds by reducing franchise tax funds flowing to the Property Tax Relief Fund, which was established by the Legislature in 2006 to offset reductions of school property taxes. It would reduce taxes collected for public schools

by about $288,000 for fiscal 2014-15 and beyond, according to the Legislative Budget Board. Because revenue in the Property Tax Relief Fund is dedicated to public education, any reduction of revenue in the fund must be offset with general revenue funds.

The Legislature should not contemplate measures that reduce funds available for public education without first restoring the deep cuts it made to schools in 2011. Until these cuts are restored, any proposal to reduce revenue to the state that is not absolutely necessary should be tabled.

OTHER OPPONENTS SAY:

While the intent of CSHB 2451 may have merit, it would continue the state's piecemeal approach to the seemingly endless issues that plague the franchise tax. Under the current tax, many businesses are taxed on expenses that should be exempt, others pay unequal rates for similar activities, and still others have to pay taxes for years where they actually report a net loss of income. The Legislature should embrace comprehensive reform or elimination of the flawed franchise tax and move away from the ad hoc approach to fixing its various problems.

NOTES:

According to the fiscal note, the bill would have the direct impact of a revenue loss to the Property Tax Relief Fund in fiscal 2014-15 of $288,000.

SUBJECT: Allowing EDCs to spend tax revenue on public state college housing

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 5 ayes — Dutton, Alvarado, Anchia, Elkins, J. Rodriguez

0 nays

2 absent — Leach, Sanford

WITNESSES: For — Carl Parker, City Of Port Arthur; Dwight Wagner, Port Arthur EDC

Against — Carlton Schwab, Texas Economic Development Council

BACKGROUND: Local Government Code, ch. 501, subch. D, grants economic development corporations (EDCs), the ability to finance certain local economic development projects.

DIGEST: HB 2473 would grant EDCs the ability to spend local sales-tax revenue for the development or construction of housing facilities on or adjacent to the campuses of public state colleges (Lamar State College - Orange, Lamar State College - Port Arthur, or the Lamar Institution of Technology).

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY: HB 2473 would allow EDCs to spend local sales-tax revenue on housing facilities on or adjacent to university and college campuses. These housing facilities would strengthen local institutions of higher education, which are proven public and private sector job creators. These new jobs would help revitalize surrounding areas.

It would be appropriate to allow EDCs to use tax funds to strengthen the Lamar State Colleges in Orange and Port Arthur and the Lamar Institute of Technology because these schools do an excellent job of improving the technical and industrial skills of the local workforce. These improvements

would have a multiplier effect on the local economy, fulfilling the charge EDCs have to grow the local economy.

HB 2473 would not start a slippery slope because every expansion of the economic development laws would need legislative approval. If a proposed expansion were inappropriate, the legislature could reject it.

The bill would not require EDCs to fund college dormitories. It only would grant them the flexibility to do so where the economic return made sense.

According to the fiscal note, the bill would have no effect on the state budget.

OPPONENTS SAY:

The Legislature should not use EDCs to fund projects or industries that have historically had their own funding mechanisms. Higher education institutions have multiple funding sources, including taxes, tuition, and tuition-revenue bonds. EDC funds should be reserved for those projects in which the state and local governments have no other way to make needed investments.

It would be inappropriate to create specific carve outs in economic development law because they place some Texas localities on an unequal footing with others. It is much better to have robust, generally applicable economic development laws that allow all of Texas to better compete globally and with other states.

A specific carve out for college dorms for the Lamar college system could create a slippery slope leading to approval by future legislatures of the same authority for similar projects at other colleges and universities. This only would reduce already limited funds for other deserving projects.

SUBJECT: Increasing the penalty for failing to report use of surface water to TCEQ

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 9 ayes — Ritter, Ashby, D. Bonnen, Callegari, T. King, Larson, Lucio, Martinez Fischer, D. Miller

0 nays

2 absent — Johnson, Keffer

WITNESSES: For — *(Registered, but did not testify:* Matthew Haertner, Public Citizen; Myron Hess, National Wildlife Federation; Ken Kramer, Sierra Club - Lone Star Chapter; Chloe Lieberknecht, The Nature Conservancy; David Weinberg , Texas League of Conservation Voters; Rita Beving*)*

Against — *(Registered, but did not testify:* Chris Howe*)*

On — Stephanie Bergeron Perdue, Texas Commission on Environmental Quality

BACKGROUND: Water Code, sec. 11.031 requires that an annual report be submitted to the Texas Commission on Environmental Quality (TCEQ) by each person who has a water right issued by TCEQ or who impounded, diverted, or otherwise used state water during the preceding calendar year.

The report contains all the information required by TCEQ in administering the water law and in making inventory of the state's water resources. No report is required of domestic or livestock users unless that person holds a water right.

A person who fails to file an annual report with the TCEQ is liable for a penalty of $25, plus $1 per day for each day the report is late, with a maximum penalty of $150. The state can sue to recover the penalty.

Water use information also must be maintained on a monthly basis during the months a water rights holder uses permitted water. The information must be made available at TCEQ's request.

DIGEST:

HB 2615 would increase the penalty for a person who failed to file an annual water use report with TCEQ to a maximum of $5,000 per day, rather than $25, plus $1 each day with a maximum of $150. This penalty also would be imposed for not complying with a TCEQ request for monthly information on water use.

This bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 2615 appropriately would raise the penalty for failure to report timely to TCEQ critical information it needs to manage the state's water resources. Texas recently experienced the worst one-year drought on record, which led to senior calls being made in certain basins. For TCEQ to adequately respond to senior calls, it needs to know how much water is being used. Unfortunately, approximately 40 percent of water rights holders do not report their annual water use, as required by statute.

Since 1977, the penalty for not reporting water use has been $25 plus $1 each additional day the report is late, with a maximum penalty of only $150. Increasing the penalty to a maximum of $5,000 for every day of not reporting would strongly encourage compliance with this reporting requirement as the state tries to balance water availability with demands under drought conditions.

While critics express concern about such a large increase in the penalty, $5,000 per day would be the maximum fine. Below that ceiling, TCEQ would have discretion in determining the exact amount of a penalty imposed for noncompliance. Further, this penalty structure would be in line with other penalties that TCEQ has authority to impose with regard to water rights.

OPPONENTS SAY:

HB 2615 would impose an enormous penalty increase for failing to report water use. While non-reporting is a problem, increasing the penalty from a maximum of $150 in total to a maximum of $5,000 per day would be too steep an initial hike. A more incremental increase would be more appropriate.

SUBJECT: DIR's standards and evaluation criteria for IR technologies

COMMITTEE: Technology — committee substitute recommended

VOTE: 5 ayes — Elkins, Button, Fallon, Gonzales, Reynolds

0 nays

WITNESSES: For — Deborah Giles, SHI Government Solutions; Patrick Hogan, Texas Technology Consortium; Annie Mahoney, Texas Conservative Coalition

Against — None

On — Deborah Hujar and Todd Kimbriel, Department of Information Resources; Edward Seidenberg, Texas State Library and Archives Commission

DIGEST: CSHB 3093 would require the Department of Information Resources (DIR) to review and report on the state's use of information resources (IR) programs and technologies and to identify ways to increase efficiency and value.

Agency coordination for technology acquisition and contracts. CSHB 3093 would require DIR to work with the Legislative Budget Board (LBB) and quality assurance team (QAT) to develop contracting standards for the purchase and acquisition of IR technologies. DIR would have to work with state agencies to ensure that standardized contracts were deployed.

Additional reporting requirements for DIR performance report. CSHB 3093 would add the following elements to the statutorily required, biennial performance report on IR technology that the department publishes on November 15 preceding each regular session:

- identification of proposed major IR projects for the next fiscal biennium, including costs throughout implementation;
- examination of major projects completed in the previous fiscal biennium, including cost effectiveness, timeliness, and other performance and assessment criteria; and

- examination of major projects two years after their completion.

Reporting on proposed major IR technology projects would have to include:

- final total cost of ownership budget data for the entire life cycle of the project, with all capital and operational costs itemized;
- the original and final actual project schedule;
- data on project progress and budget savings;
- lessons learned and performance evaluations of outside vendors and any reasons for project delays or cost increases; and
- benefits and savings generated from major technology resource projects.

Identity management pilot program. CSHB 3093 would create an identity management pilot program to control information about computer users that would authenticate the user identity, describe user access and authorization, and specify those allowed to access and modify data.

DIR would use available funds and cooperate with selected agencies to develop and execute the program to address the delivery, maintenance, and operation of centralized identity management technology.

The program would have to assess the costs to each agency participating in the pilot program, opportunities for other agencies' use, benefits to agencies participating based on program results, and the use by state agencies of multifactor authentication including biometric measures.

DIR would have to prepare a report on assessing the program's short-term and long-term costs, risks, benefits, and other impacts to implementing the program to other state agencies, which would be submitted to the governor, the LBB, and other state leaders by November 1, 2014.

The department could contract with one or more private providers for identity management services. The requirements for the pilot program would expire January 1, 2016.

Department review. DIR would have to complete a departmental review with the consultation of the QAT and the LBB. The review would examine existing statutes, procedures, data, and organizational structures to identify opportunities to increase efficiency, customer service, and

transparency.

As a part of the review DIR would have to:

- identify financial data necessary to evaluate spending from an enterprise perspective;
- review best practices from the private sector and other states;
- review existing statutes to identify inconsistencies between current law and best practices; and
- report its findings and recommendations to the governor and other legislative leaders by December 1, 2014. The review requirements would expire January 1, 2016.

CSHB 3093 would require the LBB, in consultation with DIR, to establish criteria to evaluate state agency biennial operating plans. The criteria would have to include:

- the feasibility of proposed IR technology projects;
- the plans' consistency with the state strategic plan;
- the appropriate provision of public electronic access to information;
- evidence of business process streamlining and gathering of business and technical requirements; and
- services, costs, and benefits.

Enterprise-based strategy. DIR would be required to develop an enterprise-based strategy, in consultation with the QAT and LBB, for IR technology in state government based on IR technology expenditure information collected from state agencies.

The strategy would have to consider the following opportunities for greater efficiency:

- developing PC replacement policies for the state, including alternative models for PC use that are less dependent on traditional computing;
- pursuing shared services initiatives across functional areas, including e-mail, telephony, and data storage;
- pursuing pilot programs to identify opportunities to achieve operational efficiencies;
- developing data storage, retention, and digital repository policies with the state auditor, state records administrator, and the Texas

State Library and Archives Commission;

- reviewing existing software maintenance contracts to identify opportunities to renegotiate the price of contracts or the level of service; and
- partnering with private providers for commonly used IR technologies.

A division or subdivision of the legislative branch could coordinate with and participate in shared service initiatives, pilot programs, and the development of the strategy where appropriate.

The department, QAT, and LBB would work with state agencies to improve the acquisition and delivery of IR technologies products and services.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 3093 would assess and measure current IR technologies used in state government and identify opportunities to increase efficiency, customer service, and transparency. Currently there are not concrete criteria or an accurate inventory of IR technologies used to evaluate the state's efficiency in deploying a wide variety of services across agencies. The bill would give DIR the tools and direction necessary to survey, evaluate, and plan for the future, which ultimately would save the state money.

The bill would direct DIR to work with other agencies to develop an enterprise-based strategy throughout government and an identity management pilot program. Currently, agencies are responsible for developing their own identity management pilot programs, and the bill would increase efficiency and security by procuring a universal plan that would work well for all agencies. While there would be challenges to create programs that would accommodate individual agency and third-party requirements, the bill would give DIR the flexibility to work with each interested agency to address valid differences.

OPPONENTS SAY:

Each agency has its own distinct identity management challenges. CSHB 3093 could create a universal plan that did not work well for every affected agency.

NOTES:

The author plans to offer a floor amendment that would amend CSHB 3093 as follows:

- DIR would cooperate with the Information Technology Council for Higher Education (ITCHE) in the development of an identity management pilot program;
- language describing the identity management pilot program as "centralized" would be struck from the bill;
- language describing the providers of identity management services as "private" would be struck from the bill;
- the department review would be conducted with the LBB and ITCHE; and
- the establishment of evaluation criteria for the biennial operating plans would include the ITCHE with DIR and the LBB.

SUBJECT: Creating property tax exemptions for certain energy storage systems.

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 8 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Martinez Fischer, Strama

0 nays

1 absent — Ritter

WITNESSES: For — Amanda Brown, Xtreme Power; Suzi Mcclellan, Texas Energy Storage Alliance (*Registered but did not testify*: Sandra Haverlah, Environmental Defense Fund; Susan Ross, Texas Renewable Energy Industries Association)

Against — (*Registered, but did not testify*: Mark Mendez, Tarrant County)

On — David Hodgins, Pasadena ISD; Donald Lee, Texas Conference of Urban Counties; Jim Robinson, Texas Association of Appraisal Districts; Bennett Sandlin, Texas Municipal League; (*Registered, but did not testify*: Brad Domangue, Tax Exemption School Coalition; Donna Huff, Texas Commission on Environmental Quality; Tim Wooten, Comptroller of Public Accounts)

DIGEST: CSHB 2712 would add Tax Code, sec. 11.315, to allow local governments in air pollution nonattainment areas to offer property tax exemptions for energy storage systems. An energy storage system would be defined as a device capable of storing energy to be discharged at a later time, including a chemical, mechanical, or thermal storage device. The tax exemption would have to be adopted by the local government, and the governmental entity could opt to discontinue it.

Qualifying for the exemption. In order to qualify for the exemption, the energy storage system would have to:

- be used, constructed, acquired, or installed wholly or partly to meet or exceed local, state, or federal rules for monitoring, control, or reduction of air pollution;

- be located in an air nonattainment area;
- have a capacity of at least 10 megawatts; and
- be installed on or after January 1, 2014.

School district exemptions and state reimbursement. A school district would be entitled to additional state aid to compensate the district for property tax revenue lost due to the exemption. The education commissioner, using information provided by the comptroller, would compute the amount of additional state aid to which a district was entitled. The commissioner's decision would be final and could be appealed. For the purposes of computing state aid for the 2014-15 school year, the taxable value of property in a school district would be determined as if the exemption for energy storage systems had been in effect for the 2013 tax year.

CSHB 2712 would amend Government Code, sec. 403.302(d-1) to establish that an energy storage system that received an exemption in the year that was the subject of the comptroller's study of property values for school finance purposes would not be considered taxable property for the calculation used in the study to determine the taxable value of property.

Other provisions. The bill would make conforming changes to Tax Code, sec. 11.43(c) and sec 26.012(6).

CSHB 2712 would take effect January 1, 2014, and would apply only to property taxes imposed for a tax year beginning on or after that date.

SUPPORTERS SAY:

CSHB 2712 would encourage the development of electric grid-scale energy storage systems in air nonattainment areas, benefitting the environment and promoting the reliability of the electric grid. Also, the development of energy storage systems would make Texas a national leader in this new, emerging technology vital to the use of all forms of electric generation. To address the concerns of local governments, the bill would give them the option to grant the exemption, and also the ability to discontinue it.

Energy storage would promote the stability of the electric grid and lessen the likelihood of electricity disruptions. In areas such as Houston, electric grid stability is important to large industrial and petrochemical plants, where a power failure can lead to plants' experiencing temporary shutdowns of their industrial processes, forcing them to release or burn

partially processed chemicals. This increases air pollution, and it can take a day or two for a plant to get back online and stop the release of the pollution caused by the power disruption.

For example, one plant in 2012 lost power and was forced to send tens of thousands of pounds of chemicals to the plant's emergency flare. In a short period of time, air quality went from "good" to "unhealthy for sensitive groups."

Energy storage is especially important in air nonattainment areas because permitting new air emissions from traditional generating facilities, such as natural gas-fired power plants, is increasing difficult.

CSHB 2712 would promote economic growth. Texas has already made investments through the Emerging Technology Fund in companies such as Xtreme Power, which is developing grid-level energy storage.

The bill would continue Texas' investment in an emerging technology, but in no way would it dictate the energy generation mix. Improvements in grid-level storage would benefit all forms of energy. The technology would allow for storage of solar and wind energy, as well as energy from traditional power sources like coal and natural gas.

Those who argue that the state would be subsidizing an energy source are correct. The bill would do just this, through tax exemptions implemented in partnership with local governments. However, all forms of energy have received or currently receive some form of government support. The state continues to provide exemptions for pollution control equipment, and should provide one that would have a positive environmental benefit by directly benefitting power production and offsetting some of the need for new power production.

The property tax exemptions provided by CSHB 2712 would be shared by local governments and the state. Local governments would have the option of offering the exemption. In the case of a school district opting to provide the tax exemptions, CSHB 2712 would ensure that the state reimbursed the school district for lost revenue.

While critics argue that the bill would create an inequity in the tax system, the LBB's tax/fee equity note foresees "no statistically significant impact on the overall distribution of a state tax or fee burden among individual

and businesses" as a result of the bill.

OPPONENTS SAY:

Property tax exemptions are costly corporate subsidies that result in millions of lost tax dollars every year. All too often, local governments hand out tax exemptions as a matter of course to businesses that demand them.

CSHB 2712 would impose a cost to all taxpayers in requiring the state to compensate local school districts for lost tax revenue. According to the fiscal note, exemptions "create a cost to the state through the operation of the school funding formula and additional state aid."

The bill, through the school finance system, effectively would shift tax burdens to parts of the state that would not benefit from the energy storage systems. Such a tax shift would be unfair, requiring other businesses and individuals to make up for the lost revenue through an inevitable increase in property taxes.

NOTES:

CSHB 2712 differs from the bill as introduced in that it would give local governments the option to grant or discontinue the exemption for energy storage systems.

SUBJECT: Creating dedicated personal insurers as a self-insurance program

COMMITTEE: Insurance — favorable, without amendment

VOTE: 7 ayes — Smithee, Eiland, G. Bonnen, Morrison, Muñoz, Taylor, C. Turner

0 nays

2 absent — Creighton, Sheets

WITNESSES: For — David Warden

Against — None

On — (*Registered, but did not testify:* Kevin Brady, Texas Department of Insurance; Karen Snyder, State Comptroller's Office)

DIGEST: HB 2732 would establish procedures for individuals to self-insure through the creation of "dedicated personal insurers" with the authority to issue health, automobile, and other insurance policies to the same individual - the "designated insurable individual" - who created them.

The bill would require the dedicated personal insurer be either:

- the same natural person as the designated insurable individual;
- a trust in which the designated insurable individual was the sole beneficiary; or
- a for-profit corporation or limited liability company of which the designated insurable individual was the sole owner.

To be authorized to issue a health insurance policy, a dedicated personal insurer would be required to maintain a minimum capital level of $10,000 for an individual younger than 24; $20,000 plus an additional $10,000 for each additional year between 24 and 31; and least $100,000 thereafter.

The minimum capital requirement to issue a health insurance policy could be satisfied through any combination of cash, bonds, securities marketable on a national exchange, or another commissioner-approved security. The

Texas Department of Insurance (TDI) would accept as evidence of the required capital a statement from a bank or broker showing the minimum requirements were held in an insured institution. The required capital could be deposited with the comptroller through TDI.

To be authorized to issue a personal automobile policy, a dedicated personal insurer would be required to maintain a minimum capital level of $55,000 in cash or securities, in compliance with the Transportation Code's requirements for establishing financial responsibility. Other insurance policies would require capital equal to or greater than the respective policies' aggregate policy limits.

HB 2732 would establish procedures for applying to TDI for a limited certificate of authority as a dedicated personal insurer. If approved, the certificate would be in effect for one year and could be renewed by submitting a new application. Minimum features of the certificate would be defined by the bill.

HB 2732 would permit dedicated personal insurers holding a limited certificate of authority to issue an insurance policy or other evidence of coverage to the designated insurable individual for a term lasting up to the expiration of the certificate of authority.

The bill would create provisions governing the surrender of a certificate of authority should a dedicated personal insurer not maintain the minimum capital requirements or the same relationship with the designated insurable individual. It also would classify a violation of the bill's provisions as a misdemeanor punishable by up to 180 days in jail and/or a maximum fine of $500.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 2732 would create a new mechanism for individuals to self-insure. Participating individuals would be able to avoid penalties or fines stemming from legal requirements to maintain insurance. For example, the Patient Protection and Affordable Care Act (ACA) requires most individuals to obtain qualifying health insurance starting January 1, 2014 or pay a tax penalty. Individuals self-insuring as dedicated personal insurers would be able to demonstrate minimum essential coverage and avoid this fine. This would extend to automobile and other types of insurance requirements.

Self-insurance would incentivize personal responsibility and healthy behavior and would prevent the moral hazard in which individuals with insurance are more likely to take risks since they are able to shift the costs of any coverable event onto other parties.

Dedicated personal insurers would simplify health care financing and decrease privacy risks involved with including insurance companies as third parties.

Despite claims to the contrary, self-insurance would not draw healthier individuals out of the ACA's health insurance exchanges or other health insurance markets. Individuals would choose to self-insure for a variety of reasons and not necessarily be healthier. The ACA also establishes risk-adjustment programs to ensure the average actuarial risk in an exchange remains constant.

OPPONENTS SAY:

HB 2732 would be a complicated and burdensome program that would benefit few. Because of its capital requirements, wealthier individuals would overwhelmingly represent those who chose to self-insure using dedicated personal insurers. Since these individuals tend to be healthier, the health care expenses and premiums in health insurance exchanges and other group insurance markets would increase, putting at risk the solvency of these markets.

There is also no evidence that the dedicated personal insurers would meet the ACA's standards for creditable coverage, meaning the administrative and financial costs of implementing this program would still leave individuals at risk of incurring tax penalties.

SUBJECT: Regulating motor vehicles; authorizing a fee; creating offenses

COMMITTEE: Transportation — committee substitute recommended

VOTE: 10 ayes — Phillips, Martinez, Burkett, Y. Davis, Fletcher, Guerra, Harper-Brown, Lavender, Pickett, Riddle

0 nays

1 absent — McClendon

WITNESSES: For — (*Registered, but did not testify:* John R. Ames, Tax Assessor-Collector Association of Texas; Robert Braziel, Texas Automobile Dealers Association; Les Findeisen, Texas Motor Transportation Association)

Against — None

On — Randy Elliston, Texas Department of Motor Vehicles; (*Registered, but did not testify:* Jimmy Archer, Whitney Brewster, Carol Davis, William Harbeson, and Victor Vandergriff, TxDMV; Robert Bass, County Judges and Commissioners Association of Texas)

BACKGROUND: The 81st Legislature in 2009 passed HB 3097 by McClendon, et al. to create the Texas Department of Motor Vehicles (TxDMV) as a state agency separate from the Texas Department of Transportation (TxDOT).

Government Code, sec. 418.016, allows the governor to suspend the provisions of any state regulatory statute if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.

DIGEST: HB 2741 would make various changes to motor vehicle registration, titling, and the Texas Department of Motor Vehicles.

Offenses. The bill would make it a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000) for a person to manufacture, sell, or possess a fake registration insignia or make a copy or likeness of a fake registration insignia with intent to sell the copy or likeness. A violation or threatened violation could apply if it could be shown that a

violation had occurred or was likely to occur. It would be an affirmative defense to prosecution that the insignia was produced pursuant to a licensing agreement with the TxDMV.

The bill would make it a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000) for a person to manufacture, sell, or possess a fake license plate or to make a copy or likeness of a fake license plate with intent to sell the copy or likeness. A violation or threatened violation could apply if it could be shown that a violation had occurred or was likely to occur. It would be an affirmative defense to prosecution that the license plate was produced pursuant to a licensing agreement with the department.

The bill would make it a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) for a person to manufacture, sell, offer to sell, or otherwise distribute a license plate flipper with criminal negligence. A license plate flipper would mean a device that could switch between license plates or hide a license plate from view.

The bill would make it a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) for a person to use, purchase, or possess a license plate flipper with criminal negligence.

The bill would make it an offense punishable by a fine between $5 and $200 for a person to violate any provision of chapter 504, Transportation Code, governing license plates, if the chapter prescribed no other penalty for the violation.

The changes in law made by the act would apply only to an offense committed on or after the effective date of the act.

Disabled parking placards. The bill would allow the department to issue a disabled parking placard valid for six months to a person with a permanent disability who was not a resident of the state. An applicant for a disabled parking placard would use a military identification number or an out-of-state driver's license number on his or her application. The bill would allow a peace officer to seize and destroy any improperly used disabled parking placards issued under this provision.

Rules during emergencies or disasters. Under Government Code, sec. 418.016, the governor could suspend the following in response to an

emergency or disaster declaration made by the president of the United States or the governor of another state:

- a registration requirement in an agreement entered into under the International Registration Plan;
- a temporary registration permit requirement;
- code regulating overweight or oversize vehicles;
- a motor carrier registration requirement;
- federal motor carrier or single state registration requirements; and
- a fuel tax requirement.

A motor vehicle owner could also obtain a title or registration through the county assessor-collector's office in a county bordering the one in which the owner resided if the governor had declared the owner's own county a disaster area, the neighboring county assessor-collector's office agreed, and the county met certain other requirements.

TxDMV could issue a special permit during a major disaster declared by the president of the United States for an overweight or oversize vehicle or load that would be used only to deliver relief supplies and which could easily be dismantled or divided. The permit would expire by the 120th day after the date of the major disaster declaration. The permit could have restrictions to ensure the safe operation of the permitted vehicle and reduce damage to roadways.

Deputies. The bill would require the board by rule to prescribe:

- the classification types of deputies performing titling and registration duties;
- the duties and obligations of deputies;
- the type and amount of any bonds that a county assessor-collector could require for a deputy to perform titling and registration duties; and
- the fees that may be charged or retained by deputies.

Under the bill, the commissioners court could approve a county assessor-collector to deputize an individual or business entity to perform titling and registration services in accordance with the board's rules.

By request of an appointed deputy, TxDMV could enter a contract to lease equipment to the deputy so he or she could use the automated registration and titling system. The department could require the deputy to post a bond equal to the value of the equipment. The deputy could install the

equipment as defined by the agreement.

Licensing. The bill would:

- allow the board of the TxDMV to determine by rule the information required for a dealer license application;
- allow the TxDMV to refund license fees from any funds, not just funds appropriated to the department for that purpose;
- remove a requirement for a person applying for a salvage vehicle dealer license to sign the form prescribed by the department; and
- change the definition of "license" under sec. 201.931, Transportation Code to only mean a license or permit for outdoor advertising issued under chapter 391 or 394 of Transportation Code.

Department liability, administration, hearings, and appeals. CSHB 2741 provides immunity from liability to the executive director of TxDMV, a board member, or a TxDMV employee for damages resulting from an official act or omission unless the act or omission constituted intentional or malicious malfeasance and established that the state's liability for the indemnity was not affected.

The bill would authorize the executive director of TxDMV to authorize a business entity to perform a department function in accordance with certain rules. The bill also would require the board of TxDMV to establish by rule the classification types of businesses that were authorized to perform certain functions and the fees that could be charged by an authorized business.

Under the bill, citation for an appeal would have to be served on the executive director or their designee instead of the director. The bill would further specify the circumstances requiring the attorney general to bring in the name of the state a suit for an injunction or civil penalty for a person violating or threatening to violate the rules under chapter 503, Transportation Code or chapter 2301, Occupations Code.

The bill would require the department as a whole rather than the board of the TxDMV to maintain a toll-free telephone number and to provide information to a person who requests information about repurchase or replacement of a vehicle.

Rules for dealers, manufacturers, or distributors. The bill would

require a manufacturer or distributor to provide the TxDMV with its dealer warranty, preparation and delivery requirements on request rather than as an absolute requirement. These requirements placed on a dealer would be enforceable regardless of whether the manufacturer or distributor had filed those requirements with the department.

The bill would remove the time limit for a licensed person to give written notice of their participation in a new motor vehicle show or exposition.

Vehicle identification numbers. The bill would add a requirement for the TxDMV to assign a vehicle identification number to a frame and any trailer or semitrailer that didn't have a vehicle identification number, regardless of weight. Under the bill, only the department could issue vehicle identification numbers. The bill would add travel trailers, semitrailers, or a part of a travel trailer, semitrailer, trailer, or frame to the list of equipment for which a motor vehicle owner could apply for the assignment of a vehicle identification number that had been removed, altered, obliterated, or never assigned.

Titles. Under the bill, a justice of the peace or municipal court judge could not issue an order related to a title except if there was an issue concerning stolen property or a foreclosure of a mortgage or lien was involved. A county or district judge could not order TxDMV to change the type of title for:

- a nonrepairable vehicle titled after September 1, 2003; or
- a vehicle for which the department had issued a certificate of authority.

Under the bill, a person could obtain a bonded title by filing a bond with TxDMV if the applicant possessed the vehicle, there was no security interest on the vehicle, any lien on the vehicle was at least 10 years old, and the person provided a release of all liens with a bond. A late fee for transfers of title could not be more than $250. The board by rule could set a fee for the issuance of a paper title, to cover the cost of administering the electronic title system.

Under the bill, titles with an optional rights of survivorship agreement would provide for the motor vehicle to be owned by the surviving owners when one or more of the owners died. The bill would allow an owner of a motor vehicle to operate or permit the operation of a vehicle on a public highway if the owner had applied for the title and registration of the

vehicle and obtained a receipt.

The department could issue a title for a trailer with a gross vehicle weight of up to 4,000 pounds if the other requirements for issuance of a title were met.

Refusal to issue, revocation, or suspension of title and appeal. The bill would allow a county to stamp an affidavit related to the rescindment, cancellation or revocation of an application for a title. An applicant aggrieved by a refusal, rescission, cancellation, suspension or revocation of an application could appeal only to the county or district court of the county of the applicant's residence.

License plates. The board could delegate any power related to dealer's and manufacturer's vehicle license plates, including the authority to issue a final order in a contested case hearing. An action taken under this delegation would be considered an action of the board and could not be appealed to the board. However, the board by rule could establish a procedure to allow parties to contested cases in which the final order was issued by a person delegated final order authority to file for a rehearing with the board. The bill would remove the requirement for an administrative law judge to give each party in a hearing about the sale or lease or motor vehicles a copy of the judge's proposal for a decision and the findings.

The bill would also:

- restrict issuance of specialty license plates to oil well servicing and drilling machinery;
- allow the department to extend issuance of specialty license plates for retirees from the merchant marine of the United States to current members of the merchant marine;
- restrict sec. 504.901, Transportation Code, governing transfer and removal of license plates, only to a passenger vehicle with a gross weight of 6,000 pounds or less and a light truck with a gross weight of 10,000 pounds or less; and
- change the provisions for dismissing a charge brought against a person using a wrong, fictitious, altered, or obscured license plate to require a person to show that the vehicle was issued a plate by the department that was attached to the vehicle, establishing that the vehicle was registered for the period during which the offense was committed.

Under the bill, the department could, but would not be required to issue specialty license plates in recognition of the Texas Aerospace Commission.

Electronic fund transfers and online systems. The bill would require a county assessor-collector that transfers money to the department to transfer the money electronically. Each county assessor-collector would have to process a registration renewal through an online system designated by the department.

The department could collect a fee for a person making a transaction using the state electronic Internet portal project. All fees would be allocated to the department to provide for the department's costs associated with administering the state electronic Internet portal project.

TxDMV could adopt rules to allow full and partial refunds for rejected titling and registration transactions.

Vehicle registration. The bill would:

- set new definitions for a "commercial motor vehicle" and "shipping weight" as related to vehicle registration;
- extend rules applying to vehicle registration to include temporary permits in lieu of registration;
- define the seating capacity of a bus, the weight of a passenger car, and the weight of a municipal bus or private bus as it related to vehicle registration;
- set fees for registering motor buses in alignment with current code regulating vehicles weighing more or less than 6,000 pounds and would remove references to code that no longer exists in statute;
- include registration fees for farm vehicles both more and less than 6,000 pounds;
- remove references to wire service agents from statute relating to vehicle registration and permits; and
- change part of the provisions for dismissing a charge brought for operation of a vehicle without registration to require the defendant to remedy the defect before their first court appearance in addition to paying the administrative fee of $10 or less.

CSHB 2741 would also remove the requirement for a dealer to issue a buyer new registration documents for an entire registration year upon the

sale of a used motor vehicle. On the transfer of a vehicle to a dealer, if the transferor had paid for more than one year of registration, the department could credit the transferor for any time remaining on the registration in annual increments.

Motor carrier registration. The bill would allow the department to deny a registration to a motor carrier or business if the applicant was associated with a person with an unsatisfactory safety rating or multiple code violations.

The bill would not require the department to give notice or an opportunity for a hearing before a denial of application for registration, renewal of registration, or reinstatement of registration under chapter 643, Transportation Code, governing motor carrier registration. An applicant could appeal a denial by filing an appeal with the department by the 26th day after the date the department issued notice of the denial to the applicant.

Nonresident owners of trucks. The bill would require TxDMV to issue a receipt for a permit for nonresident owners of truck, truck-tractors, trailers, or semitrailers that would be required to be carried in the vehicle for which it was issued at all times instead of being attached to the vehicle in lieu of a regular license plate.

Contracts between counties. A county tax assessor-collector, with approval of the commissioners court of the county by order, could enter into a contract with one or more counties to perform mail-in or online registration or titling duties. These agreements could be terminated by a county that was party to the contract.

Neighborhood electric vehicles.
The bill would add rules regulating the operation of neighborhood electric vehicles. Under the bill, neighborhood electric vehicles would not have to be registered or carry liability insurance.

Permitting and overweight fees. The bill would restrict a county or municipality's ability to permit a bond, fee, or license for overweight vehicles on the state highway system. Under the bill, an overweight permit would become void if the owner or owner's representative failed to comply with a rule of the TxDMV board or with a condition placed on the permit by TxDMV.

Repeal. The bill would repeal portions of Occupations Code related to:

- the role of the director of TxDMV;
- the board's immunity from liability;
- rules for an application for a manufacturer's license; and
- the role of the director in the board's conduct for proceedings for certain hearings and final orders.

The bill would repeal sections of Transportation Code related to:

- the weight of vehicles for registration purposes;
- making a decision or final order for hearings under the TXDMV's Motor Vehicle Board final;
- an applicant swearing the truth on an application for a dealer number or wholesale auction number or for dealer's or manufacturer's license plates;
- full-service deputies;
- limited-service deputies;
- deputy assessor-collectors;
- acts by deputy assessor-collectors;
- defining the "commission" as the Texas Transportation Commission for permits;
- rules for an application for a permit to move a manufactured house; and
- department responsibilities and jurisdiction.

Enactment. To the extent of any conflict, the bill would prevail over another bill passed in the 83rd Legislature relating to nonsubstantive additions to and corrections in enacted codes.

The bill would take effect September 1, 2013, except for sec. 501.146 and sec. 504.202, Transportation Code, as amended by the bill and sec. 504.948, Transportation Code, as added by the bill, which would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, those sections would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 2741 would clean up statute to bring it in line with TxDMV current practice. Whenever an agency transfers out of another department and becomes its own entity, it leaves behind inaccurate references in statute. The statutes governing TxDMV in the Occupations Code and Transportation Code were reorganized and updated in a previous legislative session to improve the agency's operations. CSHB 2741 would continue this process. The intent is not to change current policy but to bring statute in line with current practice.

The offenses created by the bill are necessary and appropriate for penalizing the manufacture, use, and sale of fake license plates, fake registration insignia, and license plate flippers. The penalties provided by the bill would be in line with penalties available for similar offenses in the Transportation Code, such as a third-degree felony penalty for falsification or forgery of the name of another person on a statement or application.

These offenses are serious and cost the state in lost registration and license plate revenue. The use of flippers on license plates makes it easier for criminals to evade law enforcement and encourages criminal behavior. Adding these offenses to statute would send a clear message that these behaviors were unacceptable.

The bill would provide disabled parking placards for disabled out-of-state drivers who were in the state for medical treatment and needed a short-term parking placard. The bill would not expand the use of placards for new populations and would include a safeguard against abuse by setting a short time frame for the placards' use and allowing peace officers to destroy placards used improperly.

OPPONENTS SAY:

The offenses added by CSHB 2741 would cost the state in increased jail time and would criminalize Texans who might not realize that they possessed a fake license plate or registration sticker. Even though the bill would provide a defense to prosecution, it still would require to go through the court system if they owned a registration sticker or license plate produced through a licensing agreement with TxDMV.

The bill also could invite abuse of the disabled parking placard application process expanded to include out-of-state drivers. There already are too few spots for disabled drivers in Texas. Expanding the system would increase the number of placards in circulation and reduce spots for those who needed them most.

SUBJECT: Allowing municipalities to place a lien on a homestead property

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 5 ayes — Dutton, Alvarado, Anchia, Elkins, J. Rodriguez

0 nays

1 absent — Leach

1 present, not voting — Sanford

WITNESSES: For — Bill Longley, Texas Municipal League

Against — Jarrod Atkinson; (*Registered, but did not testify:* Teresa Beckmeyer)

BACKGROUND: Texas Constitution, Art. 16, Sec. 50 protects a homestead from forced sale for the payment of all debts and includes eight specific exemptions.

A homestead property is defined by Section 41.002 of the Property Code as the single home for a family or single adult, not more than 10 acres for an urban home or 200 acres for a rural home.

Local Government Code, ch. 214 allows a municipality to require the vacation, relocation of occupants, securing, repair, removal, or demolition of a dangerous property as defined in the code and set by municipal ordinance. If the owner does not remedy the property, the municipality may do so itself and assess the expense or file a lien against the property, unless it is a homestead property.

DIGEST: HB 2757 would allow a municipality to place a lien against a homestead property and assess the expenses on it if the municipality had incurred expenses when vacating, relocating occupants, securing, removing, or demolishing the building that was deemed dangerous and the owner did not remedy the property. The bill would allow a municipality to do the same to remedy an enclosure or fence for a swimming pool on a homestead property if the enclosure or fence did not meet municipal code.

HB 2757 would take effect January 1, 2014, but only if HJR 123 by D. Bonnen were approved by voters. If the constitutional amendment were not approved, the bill would have no effect.

SUPPORTERS SAY:

In conjunction with the approval by voters of HJR 123, HB 2757 would allow municipalities to recoup the taxpayer dollars they spend to remedy dangerous private structures that owners neglect. Texas municipalities have a duty to secure, repair, or demolish a dangerous structure that the structure's owner has not remedied in order to prevent blight and maintain public safety. Under current law, however, the municipality cannot file a lien against the property to recover its costs if the property is a homestead, which leaves municipalities vulnerable to paying for the cost of remedying the property. As a result, taxpayer money is spent improving private property instead of for public purposes.

The Texas Constitution allows homestead liens for such transactions as refinancing a mortgage, a line of credit, and a reverse mortgage, but does not protect taxpayer money that is used to remedy a dangerous structure that the owner refuses to fix. This bill would simply provide municipalities the ability within their existing ordinances to recoup taxpayer funds after abating dangerous structures.

OPPONENTS SAY:

HB 2757, in conjunction with HJR 123, would weaken the homestead property protections in the Texas Constitution by allowing a municipality to force a sale or file a lien on a homestead if a structure on the property was deemed dangerous. HJR 123 would tie the constitutional definition of dangerous structure to the statutory definition, which would give municipalities the ability to set their own definitions by ordinance. The definitions of dangerous structure in statutes and ordinances may change and weaken over time, broadening the impact of the constitutional amendment in conjunction with HB 2757, its enabling legislation. A homestead property owner could disagree with a municipality over whether a structure was dangerous, but the municipality could force sale or file a lien on the property if the municipality remedied, or even demolished, the structure.

NOTES:

HB 2757 is the enabling legislation for HJR 123 by Bonnen. HJR 123 was reported favorably from the House Committee on Urban Affairs on April 17.

SUBJECT: Modifying the Dallas Urban Land Bank Demonstration Program

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 6 ayes — Dutton, Alvarado, Anchia, Elkins, J. Rodriguez, Sanford

0 nays

1 absent — Leach

WITNESSES: For — Terry Williams, City of Dallas Urban Land Bank

Against — None

BACKGROUND: In 2003, the 78th Legislature enacted HB 2801 by Giddings, which established the Urban Land Bank Demonstration Program Act. A municipality to which the act applies may permit the private sale of tax-foreclosed property to an urban land bank. In turn, property used for land bank purposes may be developed into affordable housing. The act outlines requirements for the city, participating developers, and other entities to follow in the acquisition and sale of such properties.

DIGEST: CSHB 2840 would modify certain requirements for the city of Dallas Urban Land Bank Demonstration Program.

A developer who had built one or more housing units, rather than three or more units, within a three-year period preceding the date the developer submitted a proposal to acquire property from the land bank would qualify for participation in the program, if the developer's plan was approved and the developer met any other program requirements adopted by the municipality.

An eligible, adjacent property owner who was allowed to purchase property the program determined was not appropriate for residential development would no longer be required to have occupied the property continuously as a primary residence for two years preceding the date of sale.

CSHB 2840 also would amend the program's requirement of transferring

land that was not appropriate for residential development back to a taxing entity if, after four years, it was not sold to a developer. Such properties could be transferred back to a taxing entity, sold to a qualifying adjacent property owner, political subdivision, or nonprofit before that four-year period was complete.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 2840 would provide the flexibility for the Land Bank Demonstration Program in Dallas to remain a successful vehicle for turning neighborhood eyesores into productive properties.

The bill would make minor but important modifications to allow for and capitalize on current economic conditions by easing the requirements for developers who wanted to participate in the program. Building one housing unit within the past three years is ample enough evidence that a developer could successfully meet the qualifications of the program. The current requirement for a developer to have built three housing units in the three years since the time the developer sought participation in the program is not reasonable. The recent recession caused many developers to pull back from their normal pace of construction. Changing the requirement would enlarge the pool of developers who would serve the program well.

Similarly, expanding the definition of an adjacent property owner would yield more sales and satisfy the program's mission of making vacant lots — in this case, lots that were not appropriate for residential development — useful again. Restoring hard-to-develop lots to the property rolls in this fashion would boost a community's tax revenues. The bill's other provision, which would allow the transfer of property to taxing entities and the sale of property to certain people and entities, would unlock development for a lot that otherwise might remain vacant.

OPPONENTS SAY:

It would be unwise to lower the requirement to help measure whether a developer was sufficiently qualified for the program. CSHB 2840 should maintain the requirement for a developer to build three housing units in the three years before seeking entrance into the program.

SUBJECT: Excluding prison inmate property claims from the Theft Liability Act

COMMITTEE: Corrections — committee substitute recommended

VOTE: 7 ayes — Parker, White, Allen, Riddle, Rose, J.D. Sheffield, Toth

0 nays

WITNESSES: For — None

Against — None

On — Sharon Howell, Texas Department of Criminal Justice, Office of General Counsel

BACKGROUND: Under the Texas Theft Liability Act, found in the Civil Practice and Remedies Code, ch. 134, a person who commits theft is liable for the resulting damages. Civil lawsuits can be brought under the act and damages can be recovered from a person who commits theft. Damages can be recovered for the amount of actual damages plus up to $1,000. Winners of suits also receive court costs and reasonable attorney's fees.

DIGEST: CSHB 2877 would specify that the Theft Liability Act did not apply to claims made by inmates housed in facilities operated by the Texas Department of Criminal Justice for property lost, damaged, or confiscated by TDCJ employees.

The bill would take effect September 1, 2013.

SUPPORTERS SAY: CSHB 2877 would stop frivolous and harassing lawsuits being filed by prison inmates against correctional staff. Inmates are using the Theft Liability Act to sue correctional officers claiming theft of items that have been confiscated appropriately. These lawsuits routinely are found to be frivolous and thrown out by courts, wasting judicial time and resources. In addition, the state must spend resources defending the employees, and the accused employees must go through the hassle of dealing with the suits, even though courts reject them.

The inmate grievance system is a fair, robust mechanism for handling inmates' claims of lost, stolen, or damaged property, and this should be used instead of frivolous lawsuits under the Theft Liability Act. The fact that in fiscal 2012 TDCJ found or replaced property in about 3,940 claims and paid for property for two claims illustrates that the system works.

OPPONENTS SAY:

The grievance system has been criticized as being unfair to inmates and should be studied before the state closes an avenue currently available to inmates with complaints about the handling of their personal property. If suits brought under the Theft Liability Act are frivolous, courts can and do throw them out.